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OCT 13 2006

OFFICE OF PETITIONS

In re Application of
Simmons
Application No. 10/080,094
Filed: February 21, 2002
Attorney Docket No. N/A
For: SAFE MUNITIONS WITH
ENHANCED VELOCITY

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ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed August 9, 2006 (certificate of mailing date August 2, 2006), to revive the above-identified application. The petition will be treated as a reconsideration petition under 37 CFR 1.137(b).

The petition under 37 CFR 1.137(a) is **dismissed**.

The constructive reconsideration petition under 37 CFR 1.137(b) is **granted**.

This application became abandoned for failure to timely reply to the non-final Office action, mailed November 24, 2004, which set an extendable three month period for reply. No extensions of time being obtained and no reply being filed, the application became abandoned on February 25, 2005. A Notice of Abandonment was mailed on June 29, 2005.

Applicant filed a petition under 37 CFR 1.137(b) on October 12, 2005 that was dismissed on May 2, 2006 for failure to file a reply to the November 24, 2004 non-final Office action.

The present petition was filed on August 9, 2006 (certificate of mailing date August 2, 2006). Petitioner utilized a form for revival of an application under the unavoidable standard of 37 CFR 1.137(a) and submitted \$60.00 as a petition fee, according to the form. The petition fee for a petition under 37 CFR 1.137(a) is \$250.00. It is noted that \$60.00 is the current fee associated with the purchase of a one month extension of time. Applicant's petition under 37 CFR 1.137(b) was dismissed on May 2, 2006. Applicant was given two months to reply. After that point, extensions of time would be necessary. The present petition was filed on certificate of mailing date August 2, 2006. It follows that the \$60.00 submitted with the present petition was meant to be a one month extension of time fee, rather than a Rule 137(a) petition fee.

In addition, it is noted that the explanation for the delay given in the present petition utilizes the word "unintentional".

Petitioner has not paid the \$250.00 rule 137(a) petition fee. The merits of a revival petition cannot be addressed without payment of the petition fee.

The above facts, taken together, led the undersigned to the conclusion that on certificate of mailing date August 2, 2006 petitioner intended to file a reconsideration petition under 37 CFR 1.137(b), **not** a new petition under 37 CFR 1.137(a). Therefore, the undersigned will treat the present petition as a reconsideration petition under 37 CFR 1.137(b).

Applicant has submitted an amendment in reply to the November 24, 2004 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the November 24, 2004 non-final Office action, and the petition fee.¹

The constructive reconsideration petition under 37 CFR 1.137(b) is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 3641 for consideration of the amendment filed on August 9, 2006 (certificate of mailing date August 2, 2006).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

¹ The statement of unintentional delay presented in the petition does not comply with the current rule. 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.